

*United States Court of Appeals
for the
District of Columbia Circuit*



**TRANSCRIPT OF
RECORD**

490
BRIEF FOR COMMISSIONER OF THE DISTRICT OF COLUMBIA

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NO. 23,369

INDUSTRIAL BANK OF WASHINGTON,

Appellant.

v.

WALTER N. TOSPINGER, Et Al.,

Appellees.

Appeal From The United States District Court
For The District Of Columbia

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Walter E. Washington as a result of the reorganization
of the District of Columbia government.

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IN THE
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FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 23,349

INDUSTRIAL BANK OF WASHINGTON,
Appellant,

v.

WALTER N. TOBRINER, Et Al.,
Appellees.

Appeal From The United States District Court
For The District Of Columbia

BRIEF FOR COMMISSIONER OF THE DISTRICT OF COLUMBIA

STATEMENT OF ISSUE PRESENTED FOR REVIEW

In the opinion of counsel for the Commissioner, the issue presented herein is whether a bank which, as a mortgage lien holder, has permitted the real property that is the security for the lien to be advertised and validly sold for unpaid District of Columbia real estate taxes, and which permits the redemption period of two years to expire, and

This case was before this Court in U.S.C.A. No. 20,947.

where the tax-sale buyer has paid all taxes, assessments, penalty, interest and costs which are outstanding against the property, can require the cancellation of a tax deed issued by the District to the purchaser after the expiration of the statutory two-year redemption period.

COUNTER-STATEMENT OF THE CASE

Appellant is the Industrial Bank of Washington (hereinafter Bank), which states it is:

" * * * the beneficial owner of a proprietary security interest in real estate in the District of Columbia described as Lot 23 in Square 2688, known as 3566 - 14th Street, N.W. * * *." (J.A. 2.)

The Bank loaned Josepha Taylor the sum of \$12,000 in July of 1963, and Taylor signed a promissory note which was secured by a deed of trust on the above-described real estate. (J.A. 2.)

The named appellees are the Board of Commissioners of the District of Columbia (hereinafter District) and Theodore J. Scheve and his wife, hereinafter referred to as Scheve, now the holders of a tax deed, but only the holders of a tax sale certificate for the above-described real property on the
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original appeal.

¹ The three Commissioners have been succeeded by a single Commissioner, the Honorable Walter E. Washington.

On January 15, 1965, Scheve purchased a tax sale certificate for Lot 23 in Square 2688 at a properly conducted District of Columbia tax sale. (J.A. 17.) The tax certificate was held by Scheve for two years. On February 13, 1967, Scheve, after having paid all the outstanding taxes and penalties on the said property, requested that a tax deed be issued to him for the property. (J.A. 17.) Prior to the commencement of the present litigation the District was prepared to issue to Scheve a valid tax deed which was based on a statutorily correct real property tax sale by District of Columbia authorities. However, on February 27, 1967, the Bank filed in the United States District Court for the District of Columbia, in Civil Action No. 452-67 a "Complaint For Injunction, Temporary Restraining Order And Preliminary Injunction." (J.A. 1.) Accompanying the above-referred to pleading was a "Motion For Temporary Restraining Order And Preliminary Injunction." (J.A. 4.) Similarly, Josepha Taylor filed in the District Court Civil Action No. 573-67 in which she sought the identical relief requested by the ² Bank. The motion for issuance of a temporary restraining

² By praecipe filed May 6, 1969 signed by her attorney, Josepha Taylor voluntarily withdrew her complaint in Civil Action No. 573-67 with prejudice.

order was preliminarily denied, and hearings were held on March 15, 1967 and April 14, 1967 on the motion for a preliminary injunction. Judge Matthews of the United States District Court denied the motion for a preliminary injunction and, on April 26, 1967 there was entered on the docket of that Court "Findings of Fact, Conclusions of Law, and Order Denying Preliminary Injunction." (J.A. 16.) The Bank filed a notice of appeal on April 27, 1967. Thereafter, on May 1, 1967, the Bank filed a motion for summary reversal in this Court which, after oral argument, was denied on May 22, 1967.

Prior to the District Court's decision on the Bank's motion for preliminary injunction defendant Scheve had filed on March 8, 1967 a motion to dismiss the complaint. No action on the motion was ever taken by the United States District Court, that Court having refused to act until the then existing appeal was disposed of [U.S.C.A. No. 20,947].

Prior to this Court's denial of the Bank's motion for summary reversal, Scheve, on August 4, 1967 filed with this Court a motion to dismiss the appeal which was granted on February 15, 1968.

Having denied the Bank's motion for summary reversal and having granted Scheve's motion to dismiss this appeal,

this Court then ordered this case remanded to the District Court "for further proceedings consistent with the attached opinion, * * *." As a result of this order the Bank, on March 24, 1968 filed in the United States District Court a motion for summary judgment with an attached memorandum of points and authorities, and a statement of undisputed material facts under Rule 9(h). All of the defendants filed oppositions and Scheve filed a cross-motion for summary judgment. (App. 6, Scheve brief.) The United States District Court heard oral argument on the motions for summary judgment on May 7, 1969. Thereafter on June 10, 1969 there was entered on the District Court's docket, a memorandum opinion granting summary judgment for all of the defendants (appellees). (App. 9-11, Scheve brief.)

The Bank then filed, on July 2, 1969, "Notice Of Appeal" to this Court which was, in fact, its second appeal, the first appeal having been dismissed. (App. 12, Scheve brief.)

ARGUMENT

Section 47-1003, D.C. Code, 1967, provides, in effect, that if property sold at a tax sale is not redeemed by the owner within two years from the last day of sale, the Commissioners (now the Commissioner), upon proper application,

shall issue a tax deed to the tax sale purchaser, "which deed shall be admitted and held to be prima facie evidence of good and perfect title in fee simple to any property upon said sale herein authorized." Issuance of a deed is conditioned upon payment of all taxes, assessments, penalties, interest, and costs, including taxes for the years for which the District itself bought in the property at tax sale.

The Industrial Bank of Washington, is, according to its own statement, the beneficial owner of a proprietary security interest acquired in 1963 in improved real estate in the District of Columbia having an estimated market value of \$20,000 and securing a promissory note made by the owner of the property having a present unpaid delinquent balance in the sum of approximately \$10,000. Appellee Scheve was the holder of a tax sale certificate for Lot 23 in Square 2688, otherwise known as 3566 - 14th Street, N.W., Washington, D.C., which he purchased on January 15, 1965 at a properly conducted District of Columbia tax sale. The tax sale certificate was held by Scheve for two years and, on February 13, 1967, after paying all the outstanding taxes and penalties on the said property, he requested that a deed be issued to him for the said property. The District Commissioners were at that time prepared to issue to Scheve a valid tax deed

which was based upon a statutorily correct tax sale by District authorities. However, the Bank's intervening litigation and request for a temporary restraining order and preliminary injunction temporarily prevented the issuance of such a tax deed but, subsequently, the deed was issued. There has never been any contention by the Bank either in the United States District Court or in this Court that the District failed in any respect to follow the statutory requirements for the sale of real property for the non-payment of real property taxes.

Appellant's contention here, as well as its contention below, has been and is that because of its security interest the Bank is in the same legal position, insofar as the District of Columbia Government is concerned, as was the prior owner of the property, with the same right of redemption.

Section 47-1003 of the Code, once a tax sale has been conducted, makes it mandatory that the District issue to the purchaser of the real property at the tax sale a "certificate of sale" and requires, further, that if the property is not redeemed by the owner (or in this case anyone who stands in his shoes) within two years from the last day of sale, there shall be issued "a deed [upon application therefor] by the Commissioners of the District to the holder of the certificate

of sale." The property here involved was not redeemed by the owner or anyone else having a right so to do within two years from the last day of the tax sale; therefore, according to the statute, the owner, or anyone else in the same legal position as the owner, had no right of redemption left. W.C. & A.N. Miller Development Co. v. Emig Properties, 77 U.S.App. D.C. 206, 134 F.2d 36 (1943).

The Bank has also contended that if the District of Columbia tax sale statutes deny to it the right to redeem after two years from the tax sale, but before execution of a tax deed to the certificate holder, then the statutes to that extent are void under the due process clause of the Fifth Amendment of the Constitution of the United States. The Bank, in the same vein, further contends that there is no question but that the Bank's security interest is protected by the due process clause of the Constitution. The District does not deny that the Bank is entitled to protect its own interest as a secured creditor. Moreover, the Bank has correctly stated that under the deed of trust held by it, the Bank has the power or the right to pay all delinquent taxes and to charge them to the note. Since the Bank argues that it is in the same legal position, insofar as the District of Columbia

Government is concerned, as Josepha Taylor the former owner, with the same right of redemption, the Bank could, at any time during the two-year period following the sale of the property here involved for delinquent real property taxes, have redeemed the property by payment to the District of the delinquent taxes. For that reason the Bank was not deprived of any of its constitutional rights since it had a full two years in which to redeem the property and to protect its interest. Certainly, there is nothing in the governing statute to indicate that the appellant, which owes its position here solely to its right under the deed of trust, has any greater right to redeem the property than did the owner of the property.

Appellant's contention that its right to redeem survives the passage of two years, and that the right to redeem "may be exercised at anytime prior to either judicial foreclosure by sale, an administrative foreclosure by sale, or administrative strict foreclosure." is incorrect.

(Appellant's Br. p. 15.)

The Bank's authority for such a contention appears to be based upon its interpretation of the Act of February 14, 1929, 45 Stat. 1173, which is reflected in Sections 47-1011 to 47-1014 of the D.C. Code. However, these Code sections

merely reflect additional methods by which the District may proceed to collect the real property tax that is unpaid on property in the District of Columbia. Appellant is laboring under the mistaken impression that the 1929 Act, supra, is inconsistent with, or by implication has repealed, Section 3 of the Act of July 1, 1902, 32 Stat. 633, which is contained in Section 47-1003 of the D.C. Code.

Either or both of these interpretations of the two acts referred to above are erroneous. This particular question was raised before in this Court in W.C. & A.N. Miller Development Co. v. Emig Properties Corporation, supra. This Court, after a thorough discussion of the two acts involved, stated as follows:

"A comparative analysis of the two tax statutes shows clearly that the 1902 Act is not inconsistent with the 1929 Act and that the latter was not intended to repeal the former. * * *" (77 U.S.App. D.C. at 211.)

Moreover, and most important, the Emig Properties case goes on to point out that the 1929 act is entitled "An additional method for collecting taxes" and in no sense does the 1929 act direct or require the District to use the methods set forth therein. The procedure used to effect the tax sale and the subsequent issuance of the tax deed to Scheve was based on the procedure set forth in the 1902 Act as reflected in Section 47-1003 of the D.C. Code.

The Bank has also overlooked the fact that Section 47-1011 sets forth a method which the District of Columbia may use when it has, itself, bid off in the name of the District of Columbia real property upon which real property taxes are due and where more than two years have elapsed since such property was bid off. In the present case, the property was not bid off in the name of the District of Columbia, but was sold directly at a valid tax sale to Scheve. The tax sale and the legal procedures which surrounded it have, in fact, never been attacked by appellant.

This Court in the Emig case after considering a somewhat analogous situation made the following observation which is as appropos today as it was when first made. The court said:

"The trial justice stated in his memorandum that 'while tax deeds should not lightly be sustained in derogation of the title of record owners of property, it is nevertheless vital and imperative to the revenue of the Government that such deeds be not set aside and cancelled unless irregularities are made to appear which render them invalid.' We find no such irregularities here." p. 212.

CONCLUSION

Based upon the foregoing, the judgment of the trial court granting summary judgment to the appellees ought to be affirmed.

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December 15, 1969

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 23,349

INDUSTRIAL BANK OF WASHINGTON.

Appellant.

WALTER N. TOBRINER, et al.

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRIEF AND APPENDIX FOR THE APPELLEE.
THEODORE J. SCHEVE

United States Court of Appeals

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Appellees.

**APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**BRIEF FOR THE APPELLEE
THEODORE J. SCHEVE**

STATEMENT OF ISSUES PRESENTED FOR REVIEW

This appeal presents the question whether a mortgage lien holder, which permits the real property upon which it holds a lien, to be advertised and sold for unpaid taxes due to the District of Columbia, and which permits the two year statutory redemption period to expire, can thereafter compel the District of Columbia as of right,

to accept the unpaid taxes, costs and interest, for which the property was sold and cancel said sale and prevent the issuance of a tax deed to the purchaser at said tax sale. This contention is contrary to the explicit language of the Statute, D.C. Code, Title 47-103.

1967 Ed.

STATEMENT OF THE CASE

This appellee states the Statement of the Case as set forth in the Appellant's brief is substantially correct, except that there was no proof of the alleged estimated value of the property. The time within which the owner of the property, Josepha Taylor, or the appellant could redeem the property, after the sale was any time prior to January 15, 1967. The tax sale at which the property was sold after due advertisement, occurred January 15, 1965. No tender of any kind for the amount of the taxes paid by appellee Scheve, plus interest and costs, was made by the appellant prior to January 15, 1967. On February 13, 1967, a period slightly less than a month after the expiration of the two year redemption period, appellee Scheve, surrendered his tax certificate for his purchase at the tax sale, and paid all of the outstanding taxes, penalties, interest and costs, and requested a tax deed be issued him for said property. The appellees, the Commissioners of the District of Columbia were prepared to issue said tax deed based on a statutorily correct tax sale by the District of Columbia authorities. This case was previously before this Court in Appeal No. 20,947, and was returned to the trial Court under this Court's order of February 15, 1964, in Appeal No. 20,947.

After return of the case to the District Court, the appellant moved for summary judgment, claiming it loaned Josepha Taylor, the owner of the property sums of money represented by a promissory note secured by a deed of trust; that the real estate taxes for last

half of fiscal year ending June 31, 1964, in sum of \$93.50 were not paid, and at the tax sale held January 15, 1965, appellee Scheve made the highest bid and received a tax sale certificate. The deed of trust securing appellant's note permitted it to pay delinquent taxes and add such payment to the obligation due it; it alleged as part of said motion that appellee Scheve, in February 1967, after the property was not redeemed prior to January 15, 1967, requested the appellee Commissioners to issue a tax deed to him, and prior to the issuance of the deed, but after the request, appellant requested appellee Commissioners to refrain from issuing such deed and offered to pay the amount of the delinquent governmental charges against the property, which the said Commissioners refused. Thereafter in open Court the appellant offered to pay such amounts which, as determined by the D.C. Treasurer was \$887.72, which tender was refused.

Thereafter appellee Commissioners filed their points and authorities in opposition to appellant's motion for summary judgment, and appellee Scheve did likewise. In addition thereto, appellee Scheve filed a motion for summary judgment. At the hearing on these motions for summary judgment, it was agreed that the appellee Commissioners would make part of the record upon which the Court could act Exhibits one through five representing Xerox copies of advertisement of tax sales in Evening Star appearing December 12, 1964, and December 19, 1964, and notices published in Washington Daily News and Washington Post that publication of the list of property being sold for delinquent taxes was published in Evening Star on the above dates. Also Exhibit No. 4 was a copy of a letter dated December 1, 1966, addressed to Joseph H. Taylor, informing her that the period for redemption of the tax sale was about to expire which was sent by Registered mail and delivered December 2, 1966. These exhibits appear in this appellee's appendix of this brief. This appellee's motion for summary judgment, together with

his affidavit is also set out in the said appellee's appendix to this brief, as well as the statement of points on which there was no issue of fact.

At the hearing of the motions, the facts set forth in the Court's memorandum opinion were agreed upon, and there the Court on June 10, 1969, granted the appellee's motion for summary judgment from which the appellant now appeals. A copy of the opinion and the order granting summary judgment for the appellees is also set out in the appendix to this brief.

ARGUMENT

The appellant, at no time, made any contentions that the District of Columbia failed, in any respect, to follow the statutory requirements for the sale of the real property for nonpayment of the real property taxes. The appellant, however, did contend that it was in the same legal position insofar as the District of Columbia government is concerned as the owner of the property with the same right of redemption. Section 47 - 1003, D.C. Code, makes it *mandatory* that the District of Columbia issue to the purchaser of the real property at a tax sale "a certificate of sale" and further, if the property is not redeemed by the owner (or in this case anyone who stands in his shoes) *within two years* from the last day of the * * * a deed (upon application thereof) *shall* be given by the Commissioners of the District * * * to the holder of the certificate of sale. The property here involved was *not* redeemed by the owner or anyone else having the right to do so within the two years from the last day of the tax sale; therefore according to the Statute neither the owner nor anyone else in the same legal position as the owner has any right of redemption left.

Prior to the issuance by the Commissioners of a tax deed to the appellee, Scheve, the appellant offered to pay all the amounts

required for redemption of property. This, the Commissioners refused since there is no provision in the Statute for acceptance of such a tender. Appellant contends that if the District of Columbia tax sale Statutes deny to the bank the right to redeem *after* two years from the tax sale, but before the conveyance, the Statutes to the extent are void under the due process clause of the Fifth Amendment of the United States Constitution. It is not argued by this appellee that the bank is entitled to protect its interest as a secured creditor and it is conceded that the appellant has correctly stated that under the deed of trust held by it, it had the right to pay delinquent taxes and charge the same to the note. This appellee concedes that the appellant, under its deed of trust, has the same rights or redemption as did the owner of the property, but he denies that the appellant had any greater right than did the owner. There was nothing to prevent the bank at any time during the two year period following the date of the sale of the property to redeem the property by paying the delinquent taxes. *This it did not do.* Therefore, the bank was not deprived of any of its constitutional rights when it had a full two year period in which to redeem the property and protect its interest. There is nothing in the governing Statute to indicate that the appellant bank, which owes its position here solely to its right under the deed of trust, has any greater right to redeem the property than did the owner of the property.

The property was advertised for sale for delinquent taxes according to the Statute and the appellant has never claimed that the tax sale involved in this case was not procedurally correct. Title 47-1003 D.C. Code by the use of the word "shall" gives no discretion to the Commissioners after the two year redemption period has expired when such a deed is demanded by the surrender of the certificate of sale. The only prohibition to the delivery of the deed is that the application for such a deed must be made within five years from the last date of the sale and this is not the situation here.

The procedure adopted by the Board of Commissioners in making the tax sale in this case was not under the procedure mentioned by the appellant in Title 47 - 1011 D.C. Code, 1967 Ed. The appellant claims a right to redeem *after* the two year redemption period and prior to either a judicial foreclosure or a strict administrative foreclosure. And that the security interest of a lender under a deed of trust, although a substantial right, cannot be greater than the ownership or the proprietary interest. In *Louisville Joint Stock Land Bank v. Radford*, 295 U.S. 555, 55 S.Ct. 854, 79 L.Ed. 1593, dealt with a mortgage in connection with bankruptcy, the mortgagee's rights under the Kentucky law could not be deprived by the bankruptcy in that a sale in bankruptcy of the property free of lien will not be ordered by the Bankruptcy Court if it appears that the amount of the encumbrance exceeds the value to be sold and in case of sale, free of liens of less than the amount of the lien, the bankruptcy estate must bear the cost of the sale. This case, cited by the appellant, has nothing to do with the instant case in that the question of a right of a mortgagee to redeem at a tax sale after the Statutory period had expired was not passed upon.

The case of *Leigh v. Green*, 193 U.S. 79, 24 S.Ct. 390, 48 L.Ed. 623, cited by the appellant, seems to be contrary to its position for that in that case the Supreme Court said that due process of law is *not* denied to the holder of alien on real property by the lack of any provision for personal services upon him or notice of the pendency of proceedings, in realm, to enforce a lien acquired by the purchaser of the property at a tax sale which are authorized by the Nebraska Statutes, where the notice is given by publication to all persons interested in the property to appear and set forth their claims. In the case at bar, there was publication which is not denied, and the reading of the case so cited uses language which is appropriate to sustaining the appellees' position. There is language in the

cited case contrary to the appellant's position in that on page 86 of the opinion the Court made the following statement:

"The Supreme Court of Nebraska has held that the term 'owner' as used in the fourth section applies to the owner of the fee and does not include a person holding a lien upon the premises. It is this section four and paragraph six which are alleged to be in conflict with the Fourteenth Amendment. The argument for the appellant (as is conceded here) concedes that the State may adopt summary or even stringent measures for the collection of taxes so long as they are 'administrative' in their character; and it is admitted that such proceedings will not divest a citizen of his property without due process of law, although had without notice of assessments or levy, or of his delinquency and the forfeiture of his lands. But the argument is, (as is here) that when the State goes into Court and invokes judicial power to give effect to a lien upon the property although created to secure the payment of taxes, the same principles and rules prevail which govern private citizens seeking judicial remedies, and require service of all interested parties within the jurisdiction. The right to levy and collect taxes has always been recognized as one of the supreme powers of the States, essential to its maintenance, and for the enforcement of which the legislature may resort to such remedies as it chooses, keeping within those which do not impair the constitutional rights of the citizen. Whether property is taken without due process of law depends upon the nature of each particular case * * *.

"The most summary methods of seizure and sale for satisfaction of taxes and public dues have been held to be authorized, and not to amount to the taking of property without due of law, as a seizure and sale of property upon one issued upon ascertainment

of the amount due by administrative officer. (*Murray v. Hoboken Land & Improvement Co.*, 18 How. 272 15 L.Ed. 372), seizure and forfeiture of distilled spirits for the payment of taxes (*Henderson's Distilled Spirits*, 14 Wall 14, 20 L.Ed. 815). * * *

"In the present case, the argument is that as the State has not seen fit to resort to the drastic remedy of summary sale of the land for delinquent taxes, but has created a lien in favor of a purchaser, at tax sale, after permitting two years to elapse in which the owner or lien holder may redeem the property, it has, in authorizing a foreclosure without actual service taken property without due process of law, because the proceedings and sale to satisfy the tax liens do not require all lien holders without the jurisdiction of the Court to be served with process. *If the State may proceed summarily, we see no reason why it may not resort to such judicial proceedings as are authorized in this case.* * * * (Emphasis supplied.)

"In the Statute under the purpose of collecting the public revenue, the State has provided for the enforcement of a lien by a purchaser at tax sale and authorizes him to proceed against the land subject to the tax, to enforce the right conferred by the State. The State has a right to adopt its own method of collecting its taxes, which can only be interfered with by Federal authorities when necessary for the protection of rights guaranteed by the Federal Constitution. In authorizing the proceedings to enforce the payment of taxes upon land sold to a purchaser at a tax sale the State in exercise of its sovereign power to raise revenues essential to carry on the affairs of State and due administrative process of the law. This fact should not be overlooked in determining the nature and extent of the powers to be exercised. 'The process

of taxation does not require the same kind of notice as is required in a suit at law, or even in proceedings for the taking of private property under the power of eminent domain. It involves no violation of due process of law when it is executed according to the customary forms and established usages, or insubordination to the principles which underline them.' *Bell's Gap R. Co. v. Pennsylvania*, 134 U.S. 232, 393, 33 L.Ed. 892, 896, 10 Sup. Ct. Rep. 533, 535. * * *

"In the case, of the consideration the notice was sufficiently clear as to the lands to be sold; the lien holders investigating the title could readily have seen in the public records the taxes were unpaid and a lien outstanding, which, after two years might be foreclosed and the land sold, and by the laws of the State, an indefeasible title given to the purchaser. Such lien holder had the right for two years to redeem or had he appeared in the foreclosure case to set up his rights in the land. These proceedings arise in aid of the right of the power of the State to collect public revenue and did not, in our opinion, abridge the right of the lien holder to the protection guaranteed by the Constitution against the taking of property without due process of law." The Supreme Court affirmed the Nebraska Court.

And, in keeping with the decision of this Court *W. C. & A. N. Miller Development Co. v. Emig Prop.*, 77 U.S.D.C. 206, 209, et seq., 134 F.2d 36, a comprehensive opinion written by Justice Rutledge. In that case, which was practically similar to the instant case, except that at the tax sale the District of Columbia purchased the property and later, on application, ordered the tax sale to be conveyed to the appellee, Emig, at a private sale upon payment of all assessments, taxes, costs and charges due to the District of Columbia of whatsoever nature, in full * * *.

This Court stated, "At the trial the Plaintiff tendered the Defendant all taxes, interest and costs paid by it in connection with Lots 21 and 22 both prior and subsequent to the date of the Defendant's tax deed." Both the plaintiff and the Defendant exhibited receipts for the taxes since 1935. * * *

It is not contended that there was any irregularity in the tax deed (similar to the contention in the instant case) to James S. Frazier and his wife. * * *

Title evidenced by a tax deed given in compliance with the statutory requirements expunges all of the interests which spring from the record title and vests in the holder a new and complete title to the property in fee simple. * * *

But this does not require the Commissioners to be burdened with searching out the interests under the wills and making a decision on their validity in view of their apparent extinction by a valid tax title to a stranger. The burden was on Harry S. Fleck, as trustee, not upon the Commissioners for the protection of the beneficial interest. * * *

The 1931 Assessment being valid we now turn to the propriety of the sale to the defendant on March 17, 1934. The Lots were advertised for sale in the name of Harry S. Fleck. They were put up at public auction sale January 14, 1932, and purchased by the District Commissioners. *The two year statutory period for redemption ended therefore on January 13, 1934.* But the appellant assigns as error the fact that the sale made on January 14, 1932, to the District of Columbia for taxes for the fiscal year of 1931 stood redeemed on March 10, 1934 upon the tax records which the law required the Assessor to keep. The undisputed testimony of the Clerk of the tax arrears divisions and the Trial Court's finding of act shows the amounts entered in the 'Tax Sale Record' in the column

entitled 'Date of Redemption' were the amounts of the 1931 taxes paid by the defendant in return for the tax deed. The 'Date of Redemption' column is used for both genuine redemptions within the statutory period and payments made upon issuance of tax deed."

The appellant in the instant case seems to think that it was mandatory upon the commissioners to file a suit in the District Court sitting in equity for the purpose of enforcing the tax lien and cites Title 47 - 1011 wherein is found the provision that the property may be redeemed by the owner thereof by payment of taxes and all legal penalties and costs. However, the appellant in this case fails to take into consideration two important and controlling features contained in that which it strives for. First, that Section dealing with a judicial sale applied only when the District of Columbia takes the property in at the date of sale because of the insufficiency of the deed and secondly, the judicial method for making a sale is only optional and discretionary. In the instant case, the property was bid in at the sale by the appellant, Scheve, and was not taken in by the District of Columbia because of the insufficiency of the deed and therefore the procedure and method outlined in Section 47 - 1001 to 47 - 1003 D.C. Code was inapplicable insofar as the procedure requiring the property to be taken in the name of the District of Columbia. This is definitely shown in the said decision of *Miller v. Emig*, supra, on page 210 of the opinion. However, on page 211 of the same opinion the Court deals with the part of the Statute which the appellant seems to think is controlling here and emphasized the optional feature in italics and on page 211 of the opinion stated as follows:

"The 1929 Act (45 Stat. 1173), which the plaintiff asserts repeals the 1902 Act, was entitled 'An Act To An Additional Method For Collecting Taxes In The District Of Columbia And For Other Purposes.' It provided in part 'whenever any real estate in the Dis-

trict of Columbia has been or shall hereafter be sold for non-payment of taxes or assessments * * * and shall have been bought in by the District of Columbia, and more than two years shall have elapsed since such bidding in, and the same has not been redeemed in the manner and on the terms provided by law, the Commissioners of the District of Columbia *may* in the name of and on behalf of the District of Columbia apply to the Supreme Court (now U.S. District Court) of the District of Columbia sitting in equity, for the purpose of enforcing such tax lien by said District of Columbia on the aforesaid property and up to the time of the sale hereinafter provided for, such property may be redeemed by the owner thereof by the payment of taxes and all legal penalties and costs thereon. * * *

"A comparative analysis of the two tax statutes shows clearly that the 1902 Act is not inconsistent with the 1929 Act and that the latter was not intended to repeal the former. As is noted above, the 1929 Act is entitled one to provide '*an additional method for collecting taxes.*' Since the 1902 Act was the only other statutory method for collecting taxes by sale of real estate, it seems clear that the two Acts were to stand together. It cannot be assumed that Congress intended to repeal the 1902 Act without specific expression to that effect. Instead, the 1902 Act was left in the Code and in 1938 Congress amended it and added 'these amendments shall apply only to the tax sales held after the passage and approval of this Act, and said Section 3 of the Act of February 28, 1898, as amended by the Act of July 1, 1902, shall remain in full force and effect as to all tax sales held prior to the passage and approval of this Act. (52 Stat. 1201) (Emphasis supplied). Under the 1902 Act the Commissioners have

no authority to convey the property for less than all of the assessments, taxes, costs, penalties and charges due to the District of Columbia. The 1929 Act provided that 'no sale shall be made less than all these, costs, including advertising and sale unless by express order of court.' The compilers of the 1940 Code note that the two statutes provide alternate methods for sale of property which has been bid in at a tax sale of the District of Columbia. (See Sections 47 - 1003 and 47 - 1001 to 47 - 1014.)

"However, this may be as to sales made for the full aggregate of accrued taxes, interests and other charges or more the major purpose of the 1929 Act seems clear. Prior to that time there was not method or authority for selling property at a tax sale for less than the aggregate amount of taxes, interests and charges in arrears. The result was that the District, having taken in property for unpaid taxes might find itself burdened with it so that it could neither sell nor derive revenue from it. The 1929 Act created authority and a method for selling such property. That was by disposing of it for less than the amount of the accrued taxes, interest and other charges. The safeguard was imposed however, that such a sale should be made only when under the order of court. The purpose of the amendment therefore was not to repeal the 1902 provisions, making disposition of property by tax sale more cumbersome and expensive than previously; but was rather to provide for disposition upon terms not permissible prior to 1929, with the safeguard of judicial approval when the sale should be made on new terms. The sale involved in this case was for the full amount of the accrued taxes, interest and other charges, in fact for more since the price included the 1934 taxes which were not then delinquent. The 1929 Act therefore had no application to this sale.

"The foregoing analysis shows that there is no reasonable basis for the plaintiff's argument that the 1929 Act has repealed the 1902 Act, under which the property was conveyed by the Commissioners to the defendant. The sale to the defendant was therefore valid." The Court then affirmed the decision. The same reasoning applies here.

To emphasize this Court's opinion in the case of *Engel v. Cattucci*, 91 U.S.App.D.C. 54, 57, 197 F.2d 597, wherein it was contended that a tax sale expunged an easement, this Court emphasized in the last line of the decision that it was not to be understood that the Court was overruling the *Miller v. Emig*, supra, in which certiorari was denied, 318 U.S. 788, 633 S.Ct. 983, 87 E.Ed. 1155.

Consequently the entire argument of the appellant in the instant case concerning judicial authorities totally fails in that no judicial sale is required and the procedure had in the instant case was under the Act of 1902, Title 47 - 1003 D.C. Code and it was not a proceeding to foreclose the District's lien and as stated in the citation made by the appellant in this case of *Leigh v. Green*, supra, page 89 "the process of taxation does not require the same kind of notice as is required in a suit at law, or even in proceedings for taking private property under the power of eminent domain. It involves no violation of due process of law when it is executed according to the customary forms and established usages, or in subordination of the principles which underlie them." Since the tax sale in the instant case was not a judicial one and in light of the above quoted language all of the argument of the appellant dealing with notice to incompetents, non-residents, fiduciaries, infants, owners and secured creditors completely are not analogous and such examples fallacious. Any person interested in the property need only to make an inquiry at the tax office to ascertain the status of the taxes and well knowing the property the appellant, in this case, if it decided not to make

such inquiry at the tax office needed merely only to examine the newspapers for the tax sales, especially when it is dealing with liens on properties and should know the importance of ascertaining that the taxes were paid.

We fail to see any connection with the cited case of *Maynard v. Sutherland*, 114 U.S.App.D.C. 169, 313 F.2d 560 and the instant case. The case just cited was an action by a daughter against her brother for possession of realty which the daughter had held along with the mother under a deed naming the mother and the daughter as joint tenants. This case deals with (1) the right of a residuary beneficiary, under will of a joint tenant takes nothing in the interest of the property so held as joint tenants, (2) the execution of a deed of trust by one joint tenant in favor of the other joint tenant did not sever the joint tenancy, (3) the trustees under the deed of trust are empowered to sell, in the event of a default, under the deed of trust, (4) terms of the deed of trust measure the powers and prescribe the duties of the trustees, (5) the trustees in a deed of trust securing a loan occupy a fiduciary relationship to the debtor and the creditor, (6) joint tenants are free to contract with each other for the use of the common property even to provide for exclusive use of the property by one of them, (7) equity of redemption is considered a real and beneficial estate, descendible by inheritance, divisible by will, and alienable by deed, (8) the deed of trust is merely security for the debt and when paid extinguishes the deed of trust. What is the connection of the cited case with the instant case?

The entire argument of the appellant in this case is predicated upon the obligation that the Commissioners were mandatorially required to conduct a judicial sale for non-payment of taxes. This argument is fully and sincerely answered by the aforesaid case of *Miller v. Emig*, supra.

The procedure adopted in the instant case whereby the appellee, Scheve, became the tax buyer was that as outlined under the Act of 1902 and was not a judicial foreclosure. If the appellant is correct the District of Columbia would be hampered in its ability to collect taxes and revenue would be interfered with in that it would be required to file literally thousands of cases in the Court with the cumbersome procedures, the heavy costs involved and totally ignores the District's right to proceed under the Act of 1902.

In *Miller v. Emig*, supra, it was decided February 1, 1942, long after the Act of 1929, the Court pointed out that the two decisions show clearly that the 1902 Act is not inconsistent with the 1929 Act and the latter was not intended to repeal the former. As is noted above the 1929 Act is entitled "an act for an additional method of collecting taxes" and since the 1902 Act was the only other Statute method for collecting taxes by sale of real estate it is clear that the two acts were to stand together and it cannot be assumed that Congress intended to repeal the 1902 Act without specific expression to that effect. Instead the Act of 1902 was left in the Code and in 1938 Congress amended it and added "these amendments shall apply only to tax sales held after the passage and approval of this Act, and said Section 3 of the Act of February 1898 as amended by the Act of July 1, 1902, shall remain in full force and effect as to all tax sales held prior to the passage and approval of this Act. Under the Act of 1902 the Commissioners had no authority to convey property for less than all assessments and taxes, costs, penalties and charges due the District.

CONCLUSION

It is respectfully urged that the judgment of the trial court be affirmed.

Respectfully submitted,

HERMAN MILLER

400 - 5th Street, N. W.
Washington, D. C. 20001
Telephone: 628-0059

Attorney for Appellee, Scheve



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APPENDIX

Defendant Commissioners' Exhibit 1

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Friday, Dec. 18, 1964

THE WASHINGTON POST

OFFICIAL NOTICES

2

NOTICE—SALE OF DELINQUENT TAX PROPERTY. OFFICE OF THE COMMISSIONERS OF THE DISTRICT OF COLUMBIA. December 17, 18, 19, 20, 21, 22, 1964. Notice is hereby given that in accordance with the provisions of the Act of Congress, approved February 28, 1868, Public Law No. 26 "An Act in relation to taxes and tax sales in the District of Columbia," as amended by Public Law No. 324, approved July 1, 1902, "An Act to amend an Act entitled "An Act in relation to taxes and tax sales in the District of Columbia," and as further amended, also in accordance with Public Law No. 348, approved May 18, 1934, relating to unpaid water and sanitary sewer service charges, also in accordance with Public Law No. 114, approved May 1, 1946, as amended, relating to insanitary buildings, also in accordance with Public Law No. 479, approved August 22, 1961, making appropriations for the Government of the District of Columbia for the fiscal year 1962, there has been published in all regular issues of the Evening Star Newspaper on December 12th and 13th, 1964, a list of taxes in arrears on real property in the District of Columbia on July 1, 1964, including unpaid water and sanitary sewer service charges, and special assessments overdue, and if these taxes, water and sewer service charges, and assessments overdue, with penalties and costs, are not paid prior to January 12, 1965, the date fixed for sale, the property involved will be sold at public auction by the Chief, Property Tax Division, Finance Office, in Room 3126, Municipal Center Building, commencing January 12, 1965, and continuing each work day, Saturday, Sunday, and legal holidays excepted, until all such delinquent property is sold. WALTER N. TOBINER, JOHN B. DUNCAN, C. M. DUKE, Commissioners of the District of Columbia. Attest: F. E. Roshaw, Secretary.

OFFICIAL NOTICE

NOTICE — SALE OF DELINQUENT TAX PROPERTY. OFFICE OF THE COMMISSIONERS OF THE DISTRICT OF COLUMBIA. December 17, 18, 19, 20, 21, 22, 1964. Notice is hereby given that in accordance with the provisions of the Act of Congress, approved February 28, 1868, Public Law No. 26 "An Act in relation to taxes and tax sales in the District of Columbia," as amended by Public Law No. 324, approved July 1, 1902, "An Act to amend an Act entitled "An Act in relation to taxes and tax sales in the District of Columbia," and as further amended, also in accordance with Public Law No. 348, approved May 18, 1934, relating to unpaid water and sanitary sewer service charges, also in accordance with Public Law No. 114, approved May 1, 1946, as amended, relating to insanitary buildings, also in accordance with Public Law No. 479, approved August 22, 1961, making appropriations for the Government of the District of Columbia for the fiscal year 1962, there has been published in all regular issues of the Evening Star Newspaper on December 12th and 13th, 1964, a list of taxes in arrears on real property in the District of Columbia on July 1, 1964, including unpaid water and sanitary sewer service charges, and special assessments overdue, and if these taxes, water and sewer service charges, and assessments overdue, with penalties and costs, are not paid prior to January 12, 1965, the date fixed for sale, the property involved will be sold at public auction by the Chief, Property Tax Division, Finance Office, in Room 3126, Municipal Center Building, commencing January 12, 1965, and continuing each work day, Saturday, Sunday, and legal holidays excepted, until all such delinquent property is sold. WALTER N. TOBINER, JOHN B. DUNCAN, C. M. DUKE, Commissioners of the District of Columbia. Attest: F. E. Roshaw, Secretary.

Defendant Commissioners'
Exhibit 2

WASHINGTON, D. C., SATURDAY, DECEMBER 12, 1964 Society, A

SQUARE 2132
THE ESTATE, INC. 2132

1881, Vol. 45.

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Defendant Commissioners' Exhibit 3

A-18 THE EVENING STAR

Washington, D. C.

Saturday, December 13, 1986

DELINQUENT TAXES (Cont.)

1. 11.	SQUARE 2643	P. 61 & Imps., \$56.52	HOLLAND, 52.33.
2. 11. W. 17	PRIEST, Stephen R., \$24. \$2.94.	SQUARE 2644	BECK, H. \$121.16.
3. G. 816 &	SQUARE 2557	NATIONAL TAX INV. CORP., 74	BROWN, C. Imps., \$1
4. G. 816 &	RAJESTON, Funeral L., 53 & Imps.,	592.42.	EDMUND, X.
5. G. 816 &	579.12.	HILL, 70%, Novel, 812 & Imps.,	EDMUND, X.
6. G. 816 &	SQUARE 2576	8407.87.	EDMUND, X.
7. G. 816 &	MEEKINGS, Yvonne L., 479 & Imps.,	SQUARE 2615	SQUARE 2615.
8. G. 816 &	8187.52.	PETERS, B. and Edmund, 13 &	PETERS, J.
9. G. 816 &	SQUARE 2677	Imps., \$194.20.	DUNCAN, J. Imps., \$1
10. G. 816 &	COHEN, Dave, 373 & Imps., \$218.72.	BRADFORD, Aunzell G., 121 &	BENTON, J.
11. G. 816 &	STRINGFELLOW, Michael D., 382 &	Imps., \$152.42.	BARTON, J. FRAZIER, INC., 77.
12. G. 816 &	Imps., \$162.12.	MEAKINS, Tom, R. and Anna C.,	FRAZIER.
13. G. 816 &	JACORSON, Roy C. and D. M., 46 &	122 & Imps., \$152.92.	McCAINTS, 162 & Imps.
14. G. 816 &	Imps., \$152.57. 452 & Imps., \$153.82.	SQUARE 2629	TURNER, Imps., \$1
15. G. 816 &	TALBERT, W. A. St. and B. D., 702	BROWN, Cleg and Alice J., 39 &	TURNER, Imps., \$1
16. G. 816 &	& Imps., \$167.75.	Imps., \$155.67.	SMITH, Norrie Bell, 802 & Imps.,
17. G. 816 &	SQUARE 2678	830.02.	WILLIAMS, J. A. and M. R., 13 &
18. G. 816 &	SKINNER, Florine R., 815 & Imps.,	Imps., \$191.59.	WILLIAMS, J. A.
19. G. 816 &	8375.47.	SQUARE 2683	BARTON, J. FRAZIER, INC., 77.
20. G. 816 &	SELLER, Jack, 817 & Imps., \$15.94.	WILLIAMS, J. A. and M. R., 13 &	FRASER, Imps., \$1
21. G. 816 &	SQUARE 2691	Imps., \$191.59.	FRASER, Imps., \$1
22. G. 816 &	TAYLOR, Josephine H., 23 & Imps.,	SQUARE 2695	FRASER, Imps., \$1
23. G. 816 &	521.51.	TURNER, Della E., 11 & Imps.,	FRASER, Imps., \$1
24. G. 816 &	SQUARE 2699	8707.43.	FRASER, Imps., \$1
25. G. 816 &	CHISLEY, Muy A., 32 & Imps.,	SQUARE 2709	FRASER, Imps., \$1
26. G. 816 &	5247.51.	EVANS, John, 32 & Imps., \$114.11.	FRASER, Imps., \$1
27. G. 816 &	SQUARE 2693	SQUARE 2617	FRASER, Imps., \$1
28. G. 816 &	NOBLE, Wm. and THOMAS, Bo, 36	AJLEN, Hart, and E. and R. F., 47 &	FRASER, Imps., \$1
29. G. 816 &	& Imps., \$142.23.	Imps., \$109.49.	FRASER, Imps., \$1
30. G. 816 &	SIMPSON, Maude D., 41 & Imps.,	SMITH, Leroy and Margaret, 63 &	FRASER, Imps., \$1
31. G. 816 &	5127.82.	Imps., \$154.45.	FRANK, Clifford L., 810, 55.81.
32. G. 816 &	SQUARE 2676	SQUARE 2618	FRASER, Imps., \$1
33. G. 816 &	MOSS, Richard F. and Joanne, 41 &	MOODY, Albert and Nel, 64 & Imps.,	FRASER, Imps., \$1
34. G. 816 &	Imps., \$129.10.	\$209.41.	JOHNSON, & UNDE,
35. G. 816 &	SQUARE 2677	SQUARE 2619	KERN, A.
36. G. 816 &	BOWSER, Cora R., 36 & Imps.,	POYNER, W. J. and Martha R., 17 &	FRASER, Imps., \$1
37. G. 816 &	5245.37.	Imps., \$204.52.	FRASER, Imps., \$1
38. G. 816 &	SQUARE 2678	SQUARE 2629	FRASER, Imps., \$1
39. G. 816 &	BUTLER, James H. and N. L., 41 &	CARTER, R. A. and 301 and A., 45 &	FRASER, Imps., \$1
40. G. 816 &	Imps., \$113.	Imps., \$208.41.	FRASER, Imps., \$1
41. G. 816 &	CAPT. NTG. & TITLE CO., INC.,	JACKSON, Dorothy C. W., 13 &	FRASER, Imps., \$1
42. G. 816 &	809. 55.72.	Imps., \$121.79.	FRASER, Imps., \$1
43. G. 816 &	SQUARE 2680	SQUARE 2629	FRASER, Imps., \$1
44. G. 816 &	FIRST COLORED BAPT. CH., Tif.,	COLEY, Elsie L. et al., 21 & Imps.,	FRASER, Imps., \$1
45. G. 816 &	36 & Imps., \$19.39.	528.44.	FRASER, Imps., \$1
46. G. 816 &	THOMPSON, James C. and M., 44 &	SQUARE 2630	FRASER, Imps., \$1
47. G. 816 &	Imps., \$112.	PEARY, John H. and E. G., 44 &	FRASER, Imps., \$1
48. G. 816 &	RICHARDSON, Payne L., et al., 45	Imps., \$193.91.	FRASER, Imps., \$1
49. G. 816 &	& Imps., \$132.82.	SQUARE 2631	FRASER, Imps., \$1
50. G. 816 &	SQUARE 2631	KEITT, O. and S. M., 33 & Imps.,	FRASER, Imps., \$1
51. G. 816 &	DUNCAN, Elsie W. and SEAL, W.,	5210.31.	FRASER, Imps., \$1
52. G. 816 &	23 & Imps., \$124.21.	SQUARE 2632	FRASER, Imps., \$1
53. G. 816 &	BYNOE, V. A. and WOODLEY, L.,	SMITH, Ruthie, 14 & Imps.,	FRASER, Imps., \$1
54. G. 816 &	30 & Imps., \$129.67.	5718.17.	FRASER, Imps., \$1
55. G. 816 &	SQUARE 2633	SQUARE 2634	FRASER, Imps., \$1
56. G. 816 &	MATTHEWS, Eileen A., 34 & Imps.,	RUBIN, Sam S. and E., 31 &	FRASER, Imps., \$1
57. G. 816 &	593.47.	Imps., \$121.79.	FRASER, Imps., \$1

App. 4

Defendant Commissioners' Exhibit 4

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF GENERAL ADMINISTRATION

FINANCE OFFICE:
PROPERTY TAX DIVISION



REPLY TO:
PROPERTY TAX RECORDS SECTION
ROOM 2156, MUNICIPAL CENTER
300 INDIANA AVENUE, N.W.
WASHINGTON, D.C. 20001

December 1, 1966

Joseph H Taylor
2634 Nichols Avenue, S.E.
Washington, D.C. 20020

1/15/67
Square 265S

1/15/67
Lot 23

1/15/67
Parcel

NOTICE OF EXPIRING REDEMPTION PERIOD

The real property described above including improvements, if any, assessed in your name, was sold for taxes and/or special assessments on January 15, 1965. Your right to redeem this property from the tax sale will expire on January 15, 1967. If not redeemed, the holder of the certificate of sale may apply for a deed and if issued you would lose title to this property.

The amount necessary to redeem this property from the sale of January 15, 1965 is \$ 16.23. Inquiries should be made to this office immediately either in person or by calling 629-3135.

Very truly yours,

James Carman
James Carman
Tax Clerk Supervisor
Property Tax Division

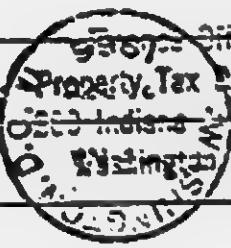
FP-228 (Rev. 6-66)

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Defendant Commissioners' Exhibit 5

INSTRUCTIONS TO DELIVERING EMPLOYEE		
<input type="checkbox"/> Show to whom and date delivered <input type="checkbox"/> Show to whom, date, and address where delivered <input type="checkbox"/> Deliver Only to addressee <small>(Additional charges required for these services)</small>		

RECEIPT	
Received the numbered article described below.	
REGISTERED NO.	SIGNATURE OR NAME OF ADDRESSEE (Must always be filled in)
885062	<i>[Signature]</i>
CERTIFIED NO.	SIGNATURE OF ADDRESSEE'S AGENT, IF ANY
INSURED NO.	
DELIVERED	SHOW WHERE DELIVERED (only if requested)
12/12/66	
65-26-71348-9 6-0	

S. 2688 Lot 23		PERMIT FOR PRIVATE USE TO BE USED PERMIT OF RECEIPE, 1968
POST OFFICE DEPARTMENT OFFICIAL BUSINESS		POSTMARK OF DELIVERING OFFICE
INSTRUCTIONS: Show name and address below and complete instructions on other side, where applicable. Stamp forward end, attach and hold firmly to back of article. Print on face of article RETURN RECEIPT REQUESTED.		
NAME OF SENDER STREET, ABD NO. OR P.O. BOX 2501 - 2501 POST OFFICE NAME & ZIP CODE PROPERTY TAX DIVISION HOWARD UNIVERSITY		
RETURN TO 		

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

INDUSTRIAL BANK OF WASHINGTON
Plaintiff

v.
Civil Action No. 452-67

THEODORE J. SCHEVE, et al
Defendants

**MOTION OF THE DEFENDANT THEODORE J. SCHEVE,
FOR SUMMARY JUDGMENT**

Comes now the defendant, Theodore J. Scheve, by his attorney, and moves the Court to enter summary judgment herein in his favor for the following reasons:

1. That there is no genuine issue of fact in the above entitled action as appears from the statement of undisputed material facts and which is admitted by the plaintiff.
2. As a matter of law, this defendant is entitled to the granting of such summary judgment in that the complaint fails to state a cause of action and the other pleadings and affidavits likewise show that this defendant is entitled to the granting of such motion.
3. For such other and further reasons as will be presented to the Court upon the hearing of this motion.

Herman Miller
Attorney for the Defendant,
Theodore J. Scheve

**STATEMENT OF UNDISPUTED MATERIAL
FACTS UNDER RULE 9(h)**

1. Plaintiff loaned to Joseph H. Taylor \$12,000.00 in July of 1963 taking a promissory note to its order for such sum bearing interest at six percent per annum upon which interest and principle were to be paid in monthly installments of \$96.00 until August 22, 1973, at which time the unpaid balance would become due and payable. The balance of said promissory note is the sum of \$10,504.38 with interest from December 1, 1966. This note was secured by a deed of trust on the real estate belonging to the said Joseph H. Taylor known as 3566 - 13th Street, N.W., Lot 23 in Square 2688, recorded among the Land Records of the District of Columbia in Liber 12056, Folio 240.

2. The Defendants Walter N. Tobriner, et al were then the Board of Commissioners of the District of Columbia and who advertised the said property for tax sale for the last half of the fiscal year ending June 30, 1964, in the sum of \$93.50 which sum was not paid and after due advertisement in a local newspaper, according to law, the sale was held on January 15, 1965 at which sale the Defendant, Scheve, purchased the property for \$93.50, which was the highest and only bid and a tax sale certificate was issued to him upon the payment of such sum to the District.

3. The deed of trust securing the Plaintiff's loan provided that it was empowered to pay any delinquent obligations, including taxes, which might result in liens or encumbrances against the security property and add the amount of such payments to its obligation.

4. This Defendant is willing to concede that Plaintiff received no actual notice from the District of Columbia that the taxes were not paid, but notice to that effect properly appeared by legal advertisement in a local newspaper and the property was not redeemed prior to January 15, 1967.

5. On February 13, 1967, after paying all of the outstanding taxes pending on the said property at that time, Defendant Scheve, requested a tax deed be issued to him for said property.

6. Prior to the instigation of the litigation in this Court, the Commissioners were prepared to issue to Scheve a valid tax deed which was based upon a statutorial correct tax sale by the District authorities.

7. There is no contention in this Court, at any time, that the District of Columbia failed in any respect, to follow the statutorial requirements for the sale of the real property for non-payment of real estate taxes.

8. Prior to the actual delivery of said tax deed to the Defendant, Scheve, the Plaintiff requested the Commissioners to refrain from issuing a deed and offered to pay the amount of the delinquent taxes, penalties and interest.

9. The Commissioners refused such tender, (which also was made in open Court) since there was no provision in the Statute for the acceptance of such a tender.

Herman Miller
Attorney for Defendant, Scheve

AFFIDAVIT

DISTRICT OF COLUMBIA, ss:

THEODORE J. SCHEVE, one of the defendants in the above entitled action, first being duly sworn, on oath deposes and says that he makes this Affidavit upon his own personal knowledge.

He states that after this case was heard before Judge Matthews that he entered into a private agreement with the plaintiff in Civil

Action No. 573 - 67, wherein Josepha H. Taylor is named as plaintiff against the same defendants in the above entitled action and states that he has made a full and complete settlement with her in which the said Josepha H. Taylor has recognized this defendant as the owner of the said property involved in that action which involves Lot 23 in Square 2688, known as 3566 - 14th Street, N.W.

/s/ Theodore J. Scheve

Subscribed and sworn to, before me, this 28th day of April, 1969.

/s/ E. Daniel Bloom
Notary Public D.C.

MEMORANDUM OPINION

This matter comes before the Court for summary judgment upon agreed facts following the dismissal of an appeal from an earlier denial of a preliminary injunction. *Industrial Bank of Washington v. Tobriner*, No. 20,947 (D.C. Cir., Feb. 15, 1967). The dispute concerns the meaning and effect of various provisions of the District of Columbia Code governing tax sales of real estate and the opportunity for redemption by owners or others having a beneficial interest in the property.

Industrial Bank held a deed of trust note on the real estate involved here. After proper notice of tax delinquency to the owner by letter and to all others by publication, the property was sold at a tax rate held in the manner prescribed by 47 D.C. Code §§ 1001 et seq. The owner did not redeem in the two-year period that followed, nor did Industrial Bank.* Plaintiff, upon first learning of the

*Although not required by statute, the record owner was sent a Notice of Expiring Redemption Period by registered mail 90 days before the end of the two-year period.

sale immediately after the two years had passed, sought to redeem the property before the issuance of the requested tax deed. Since the statute on its face permits no such redemption and all forms of notice provided by the statute had been properly given, Industrial Bank's request was denied.

Plaintiff now claims its constitutional rights have been violated and presses for an interpretation which would read into the Code, for all parties having a beneficial interest in property sold at tax sales, a right of redemption during the time between the end of the two-year redemption period and the issuance of the requested tax deed.

A tax sale is not a government taking for which just compensation must be paid under the Constitution after judicial proceedings. Industrial Bank's beneficial interest gave it no right to have notice by personal service of the administrative tax proceedings for the Code, § 47-1001, provides only for notice by publication, which is sufficient under the authorities. See *Leigh v. Green*, 193 U.S. 79 (1904).

Nor is plaintiff entitled to redeem the property after the passage of two years but before the issuance of the requested tax deed. Judicial sale which permits such redemption under 47 D.C. Code § 1011 is an additional method for collecting taxes which does not replace or add to administrative sale procedures. See *W. C. & A. N. Miller Development Co. v. Emig P. Corp.*, 77 U.S.App.D.C. 205, 134 F.2d 36 (1943), cert. denied, 318 U.S. 788 (1943). Clearly when an administrative sale occurs, "if the property shall not be redeemed by the owner or owners thereof within two years . . . a deed shall be given . . . to the purchaser at such tax sale . . ." 47 D.C. Code § 1003. (Emphasis added). There is no constitutionally mandated right to redemption after the passage of two years under such circumstances.

These Code provisions work well. Notice by publication provides a delinquent tax list which banks having beneficial property interests may and normally do check regularly. Where owners default banks have adequate time to protect their interests. This is the routine procedure followed in this city. Industrial Bank was simply asleep at the switch, but its legal rights were not ignored.

Summary judgment is granted for defendants. Counsel to submit appropriate order.

/s/ Gerhard A. Gesell
United States District Judge

June 10, 1969

ORDER GRANTING SUMMARY JUDGMENT

Upon consideration of the motion filed herein by the defendant, Theodore J. Scheve, and the motion filed by the plaintiff, Industrial Bank of Washington, for summary judgment and is appearing to the Court that the defendant, Walter N Tobriner, John B. Duncan and Robert E. Mathe, the Board of Commissioners for the District of Columbia adopting the position of the defendant, Theodore J. Scheve, and argument thereon by the counsel for the respective parties and thereupon, it is this day of June, 1969, by the Court,

ORDERED: That the motion filed herein by the defendant, Theodore J. Scheve, on his own behalf and on behalf of the other defendants be, and the same is hereby granted and it is further,

ORDERED: That the motion filed by the plaintiff, be, and the same is hereby denied.

By the Court,

/s/ Gerhard A. Gesell
United States District Judge

NOTICE OF APPEAL

Notice is hereby given this First day of July, 1969, that
Plaintiff, Industrial Bank of Washington
hereby appeals to the United States Court of Appeals for the Dis-
trict of Columbia from the judgment of this Court entered on the
30th day of June, 1969 in favor of Defendants Theodore Scheve, et
al and The District of Columbia against said Plaintiff, Industrial
Bank of Washington.

/s/ George H. Windsor
Attorney for Plaintiff

